

Tanya E. Moore, SBN 206683
MOORE LAW FIRM, P.C.
300 South First Street, Ste. 342
San Jose, California 95113
Telephone (408) 298-2000
Facsimile (408) 298-6046
E-mail: service@moorelawfirm.com
tanya@moorelawfirm.com

Attorney for Plaintiff
Hendrik Block

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HENDRIK BLOCK,)	No.
)	
Plaintiff,)	COMPLAINT ASSERTING DENIAL OF
)	RIGHT OF ACCESS UNDER THE
vs.)	AMERICANS WITH DISABILITIES ACT
)	FOR INJUNCTIVE RELIEF, DAMAGES,
AMAZON RETAIL LLC dba AMAZON)	ATTORNEYS' FEES AND COSTS (ADA)
BOOKS SANTANA ROW; FRIT SANTANA)	
ROW TRS, INC.;)	
)	
Defendants.)	
)	
)	

I. SUMMARY

1. This is a civil rights action by plaintiff HENDRIK BLOCK ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Amazon Books Santana Row
333 Santana Row #1120
San Jose, CA 95128
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against AMAZON RETAIL LLC dba AMAZON BOOKS SANTANA ROW and FRIT SANTANA ROW TRS, INC. (hereinafter collectively referred to as "Defendants"), pursuant

1 to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.)
2 (“ADA”) and related California statutes.

3 **II. JURISDICTION**

4 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
5 claims.

6 4. Supplemental jurisdiction for claims brought under parallel California law –
7 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

8 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

9 **III. VENUE**

10 6. All actions complained of herein take place within the jurisdiction of the United
11 States District Court, Northern District of California, and venue is invoked pursuant to 28
12 U.S.C. § 1391(b), (c).

13 **IV. PARTIES**

14 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
15 persons), firm, and/or corporation.

16 8. Plaintiff is substantially limited in his ability to walk, and must use a cane,
17 wheelchair, or electric scooter for mobility. Consequently, Plaintiff is “physically disabled,” as
18 defined by all applicable California and United States laws, and a member of the public whose
19 rights are protected by these laws.

20 **V. FACTS**

21 9. The Facility is open to the public, intended for non-residential use, and its
22 operation affects commerce. The Facility is therefore a public accommodation as defined by
23 applicable state and federal laws.

24 10. Plaintiff frequently travels to the area where the Facility is located and visited
25 the Facility on or about June 30, 2020 for the purpose of shopping. During his visit to the
26 Facility, Plaintiff encountered the following barriers (both physical and intangible) that
27 interfered with, if not outright denied, Plaintiff’s ability to use and enjoy the goods, services,
28 privileges and accommodations offered at the Facility:

- a) The first aisle in the store to the right was narrow and difficult for Plaintiff to maneuver his scooter down.
- b) There was a cord covering on the floor which made a raised height change that was hard for Plaintiff to drive his scooter over.
- c) The interior of the restroom lacked sufficient clearances, which made it difficult for Plaintiff to maneuver his scooter inside.
- d) The restroom trash can opened via a foot pedal, which Plaintiff could not use.

11. The barriers identified in paragraph 10 herein are only those that Plaintiff personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once such additional barriers are identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to his disabilities removed to afford him full and equal access.

12. Plaintiff was, and continues to be, deterred from visiting the Facility because Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities. Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility once the barriers are removed.

13. Defendants knew, or should have known, that these elements and areas of the Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Defendants have the financial resources to remove these barriers from the Facility (without much difficulty or expense), and make the Facility accessible to the physically disabled. To date, however, Defendants refuse to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14. At all relevant times, Defendants have possessed and enjoyed sufficient control and authority to modify the Facility to remove impediments to wheelchair access and to comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for Accessible Design. Defendants have not removed such impediments and have not modified the

1 Facility to conform to accessibility standards. Defendants have intentionally maintained the
 2 Facility in its current condition and have intentionally refrained from altering the Facility so
 3 that it complies with the accessibility standards.

4 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
 5 so obvious as to establish Defendants' discriminatory intent. On information and belief,
 6 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
 7 to relevant building standards; disregard for the building plans and permits issued for the
 8 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
 9 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
 10 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
 11 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
 12 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

13 //

14 VI. FIRST CLAIM

15 Americans with Disabilities Act of 1990

16 Denial of "Full and Equal" Enjoyment and Use

17 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
 18 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

19 17. Title III of the ADA holds as a "general rule" that no individual shall be
 20 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
 21 goods, services, facilities, privileges, and accommodations offered by any person who owns,
 22 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

23 18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal
 24 enjoyment" and use of the goods, services, facilities, privileges and accommodations of the
 25 Facility during each visit and each incident of deterrence.

26 Failure to Remove Architectural Barriers in an Existing Facility

27 19. The ADA specifically prohibits failing to remove architectural barriers, which
 28 are structural in nature, in existing facilities where such removal is readily achievable. 42

1 U.S.C. § 12182(b)(2)(A)(iv).

2 20. When an entity can demonstrate that removal of a barrier is not readily
3 achievable, a failure to make goods, services, facilities, or accommodations available through
4 alternative methods is also specifically prohibited if these methods are readily achievable. Id.
5 § 12182(b)(2)(A)(v).

6 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
7 barriers at the Facility without much difficulty or expense, and that Defendants violated the
8 ADA by failing to remove those barriers, when it was readily achievable to do so.

9 22. In the alternative, if it was not “readily achievable” for Defendants to remove
10 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
11 services available through alternative methods, which are readily achievable.

12 //

13 //

14 Failure to Design and Construct an Accessible Facility

15 23. Plaintiff alleges on information and belief that the Facility was designed and
16 constructed (or both) after January 26, 1993 – independently triggering access requirements
17 under Title III of the ADA.

18 24. The ADA also prohibits designing and constructing facilities for first occupancy
19 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
20 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

21 25. Here, Defendants violated the ADA by designing and constructing (or both) the
22 Facility in a manner that was not readily accessible to the physically disabled public –
23 including Plaintiff – when it was structurally practical to do so.¹

24 Failure to Make an Altered Facility Accessible

25 26. Plaintiff alleges on information and belief that the Facility was modified after
26 January 26, 1993, independently triggering access requirements under the ADA.

27
28 ¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 27. The ADA also requires that facilities altered in a manner that affects (or could
2 affect) its usability must be made readily accessible to individuals with disabilities to the
3 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
4 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
5 fountains serving that area accessible to the maximum extent feasible. Id.

6 28. Here, Defendants altered the Facility in a manner that violated the ADA and
7 was not readily accessible to the physically disabled public – including Plaintiff – to the
8 maximum extent feasible.

9 Failure to Modify Existing Policies and Procedures

10 29. The ADA also requires reasonable modifications in policies, practices, or
11 procedures, when necessary to afford such goods, services, facilities, or accommodations to
12 individuals with disabilities, unless the entity can demonstrate that making such modifications
13 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

1 3. Attorneys' fees, litigation expenses, and costs of suit.²

2 4. Interest at the legal rate from the date of the filing of this action.

3 5. For such other and further relief as the Court deems proper.

4 Dated: 08/20/2020

MOORE LAW FIRM, P.C.

6 /s/ Tanya E. Moore

7 Tanya E. Moore

8 Attorney for Plaintiff

Hendrik Block

27 _____
28 ² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, HENDRIK BLOCK, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 8/20/2020

/s/ Hendrik Block

Hendrik Block

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore, Attorney for
Plaintiff, Hendrik Block